

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

**TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE FREDERICK J. KAPALA**

**For the Government:**

**For the Defendant:**

## Also Present:

**Court Reporter:**

PDF created with pdfFactory trial version [www.pdffactory.com](http://www.pdffactory.com)

1 THE COURT: Good morning. Any Cistrunk sightings?

2 MR. BYRD: No, sir.

3 MR. KARNER: I didn't see you come in, Judge.

4 THE COURT: That's all right. I snuck in.

5 All right. Let's call the case, Susan.

6 THE CLERK: 11 CR 50062-1, U.S.A. v. Dayton Poke.

7 MR. KARNER: We need the defendant, right?

8 THE COURT: Pardon me?

9 MR. KARNER: The defendant has to be here.

10 THE COURT: Right. Show Mr. Karner, Mr. Pedersen  
11 appear on behalf of the government. Mr. Byrd appears for the  
12 defendant. We're waiting for the defendant to be brought up  
13 from the jail. You haven't heard from Mr. Cistrunk?

14 MR. BYRD: No, sir. We tried to call him Friday,  
15 Mr. Karner, myself, Agent Ivancich, and it appears the phone's  
16 been turned off. All we were getting was a rapid busy signal.

17 THE COURT: There was a representation to me the last  
18 time we were in court that somebody from the government was  
19 going to contact Mr. Cistrunk and tell him to be here at 8:45.

20 MR. KARNER: I said we were going to try, and that's  
21 what we tried to do on Friday, Judge, in the presence of  
22 Mr. Byrd. Agent Ivancich dialed the contact number that we have  
23 for Mr. Cistrunk while his phone was on speaker phone in the  
24 presence of Mr. Byrd, and he tried it twice, and all we had was  
25 a rapid busy tone, leading us to believe that the phone's no

1 longer in operation. So, we tried to do as we told the court  
2 that we would do.

3 THE COURT: All right. Well, let's wait 'til Mr. Poke  
4 comes in.

5 MR. BYRD: Judge, do we maybe want to have the marshals  
6 alerted at the front door that if Mr. Cistrunk arrives, we're  
7 notified?

8 THE COURT: Right. Tim would you let the marshals at  
9 the front door alert us when Mr. Cistrunk appears? I don't know  
10 how they would know who Mr. Cistrunk is.

11 MR. BYRD: C-i-s. He would have to produce an ID to  
12 come in the building.

13 THE COURT: It's on the witness list as S-i-s.

14 MR. BYRD: It should be C-i-s.

15 Judge, also, while we're on the subject of the witness  
16 list, I believe based on my conversations with Mr. Karner that,  
17 if needed, we'll have a stipulation as to medical records from  
18 SwedishAmerican Hospital. In the event we're not going to be  
19 able to get that stipulation, there is a record-keeper by the  
20 name of Teresa Jones that we would be calling to authenticate  
21 medical records, if that issue should become necessary. And  
22 that's spelled T-e-r-e-s-a Jones.

23 THE COURT: You want me to add that onto the civilian  
24 list then?

25 MR. BYRD: Yes, sir.

1           **THE COURT:** From Rockford, Illinois?

2           **MR. BYRD:** Yes.

3           **THE COURT:** I've received the potential witness list  
4 and also a joint proposed statement of the case. There's a  
5 mistake on the statement. It says with intent to distribute  
6 marijuana. I think that should be cocaine base.

7           **MR. KARNER:** Yes.

8           **THE COURT:** You agree that I should change it?

9           **MR. KARNER:** Yes. Judge, Sarah Anderson is here.  
10 She's our chemist. She's here to produce some notes. Can she  
11 come before the court and turn those notes over?

12           **THE COURT:** Yes.

13           **MR. KARNER:** Judge, apparently, she needs a subpoena.  
14 I'll get that for her later. Will the court order that she turn  
15 those over to us and with a subpoena to issue later this  
16 morning?

17           **THE COURT:** Yes. Sarah, will you be able to do that  
18 for us?

19           **MS. ANDERSON:** I can, yes.

20           **THE COURT:** Okay. Thank you.

21           **Show Mr. Poke appears. What's your position as far as**  
22 **Mr. Cistrunk?**

23           **MR. BYRD:** Judge, it would be my intent to ask for a  
24 contempt warrant for Mr. Cistrunk if he fails to appear and that  
25 the trial be continued until such time as he can be located and

1       secured and interviewed by myself and the government.

2               MR. KARNER: I think the proper procedure would be for  
3 a material witness, that he be taken into custody as a material  
4 witness, and once he's taken into custody we have the  
5 opportunity to depose him as a fallback in case he's not  
6 available.

7               THE COURT: All right. Well, I'll do both. I'll show  
8 he's failed to appear. I'll issue a warrant for his arrest. If  
9 you provide me with the material witness warrant, I'll sign  
10 that.

11              MR. KARNER: Will that be Mr. Byrd's responsibility?

12              THE COURT: Yes.

13              MR. BYRD: Do you have a form I can look up that you've  
14 noticed before? Or I can try to put one together.

15              MR. KARNER: I can work with you on it. I don't have a  
16 form

17              MR. BYRD: I've never had the occasion to do this.  
18 I'll be happy to try and prepare it.

19              THE COURT: All right. Then I'll do that right now.  
20 You'll prepare the warrant for me or the bench warrant,  
21 Mr. Karner?

22              MR. KARNER: Yes, sir, we'll do that.

23              THE COURT: All right. I'd like that to issue --

24              MR. BYRD: What would I then --

25              THE COURT: Pardon me?

1                   **MR. BYRD:** What would I then be preparing?

2                   **THE COURT:** I'm going to do both. I'm going to issue a  
3 bench warrant because he failed to respond to the subpoena, and  
4 I'm going to ask Mr. Byrd to prepare a material witness warrant  
5 to have him arrested or taken into custody on a material  
6 witness -- as a material witness.

7                   And I suppose the best course of action would be to go  
8 ahead, pick the jury. Hopefully, he'll be arrested or  
9 apprehended by the time the jury is sworn, and we'll hold him  
10 until he's called. I'll have him brought in front of me. I'll  
11 examine him as far as why he didn't appear in response to the  
12 subpoena, and also I'll conduct an examination pursuant to the  
13 material witness warrant, and I'll find out whether he should be  
14 held or not.

15                  **MR. KARNER:** Well, there's another issue, too. If he  
16 were to testify as at least one time he's indicated that he  
17 would, we believe -- I don't think there's any question that  
18 he's got a Fifth Amendment privilege against self-incrimination,  
19 too, Judge. So, there is an issue of whether or not he should  
20 be informed of his Miranda rights before he testifies and  
21 whether or not he should be appointed counsel to consult with in  
22 connection with his testimony here.

23                  **THE COURT:** I agree. I'll review that with him

24                  **MR. BYRD:** Judge, obviously, unless there's a  
25 substantial break during the day, I'm not going to be able to

1       prepare a material witness warrant.

2               THE COURT: Can't you do it now?

3               MR. BYRD: If there's a form, I'd be happy to fill it  
4 out. I don't have my computer with me. I'd have to go back to  
5 my office.

6               THE COURT: Okay. Well, why don't you do what you need  
7 to do, but I need to get that out before we bring the jury in.

8               MR. KARNER: So, how much time is your Honor going to  
9 give us we should report back?

10              THE COURT: Come back as soon as you can.

11              MR. KARNER: Okay. And we're responsible for preparing  
12 the bench warrant.

13              THE COURT: The bench warrant, right. And I'd like to  
14 sign both of those before we call the jury in.

15              MR. KARNER: Yes, sir.

16              MR. BYRD: Then, Judge, at the end of the day, once we  
17 get a jury, would it be the court's intent then to prior to  
18 swearing them send them home and they'll be called when  
19 Mr. Cistrunk's apprehended?

20              THE COURT: I don't know. It depends upon what we find  
21 out between now and then. I may just discharge the jury and  
22 come back on another day. But maybe we'll get some idea about  
23 where he is. Maybe he'll call. Lots of things could happen  
24 between now and the time that I swear in the jury.

25              MR. BYRD: Understood.

1           MR. KARNER:   Okay.

2           THE COURT:   Yes.   Mr. Poke.

3           DEFENDANT POKE:   With all due respect, your Honor, I'm  
4   still -- I mean, I couldn't prepare a motion to get counsel off  
5   my case.  It's the same thing.  I can't get him to work with me.  
6   I don't know nothing what's going on with this case.  They  
7   brought me back five days earlier for me to meet with him.  He  
8   never show up.

9           I don't know how -- I don't know nothing about the  
10   witnesses, how we going to prepare them for the bench.  He just  
11   informed me today that one of the witnesses he never talked to.  
12   He sent the ATF agent to talk to him for what I don't know.  I  
13   mean, I understand you say Mark a good lawyer, but, man, Mark's  
14   not working with me.

15          THE COURT:   Well, my experience with Mr. Byrd is that  
16   he's done an excellent job in court, but as I told you before,  
17   if you file a motion, I will put everything I know about  
18   Mr. Byrd aside, and I will --

19          DEFENDANT POKE:   I don't know how.

20          THE COURT:   -- consider the motion based upon what  
21   information I receive during the hearing on the motion.

22          DEFENDANT POKE:   I mean, I don't know how.

23          THE COURT:   But you have to file the motion.

24          DEFENDANT POKE:   I don't know how.

25          THE COURT:   Well, you write -- I told you how.  The

1       last time we were in court I told you how.

2               DEFENDANT POKE: Yeah. You told --

3               THE COURT: Listen. You're interrupting me, and I  
4       don't like it. I won't interrupt you if you promise you won't  
5       interrupt me. Is that a deal?

6               DEFENDANT POKE: All right.

7               THE COURT: All right. The last time we were in court,  
8       I told you to write a motion. I told you to prepare a motion.  
9       All you had to do is write down the things that Mr. Byrd's not  
10      doing or is doing that makes him unqualified to represent you.  
11      That was a simple request. And now we have a jury coming in.  
12      You know, we're set to go right now, and you're telling me you  
13      want to file your motion. I told you to file the motion in  
14      writing and I would take care of it.

15              All right. It's your turn.

16              DEFENDANT POKE: I mean, I tried to get in contact with  
17      him to let him know my situation and what's going on with me  
18      trying to prepare a proper motion. I mean, as him being my  
19      counsel, he's supposed to be in contact with me. I mean, he's  
20      here. You can ask him what he's doing and what he ain't doing.  
21      I'm pretty sure he ain't going to lie. I mean, it's simple.  
22      He's not working, your Honor.

23              THE COURT: All you have to do is write down the things  
24      that you feel show that Mr. Byrd is falling short of what a  
25      competent counsel should do to represent you. You don't need

1       **Mr. Byrd to do that. You can write it on a piece of paper.**

2               **DEFENDANT POKE: So, I can write it during recess?**

3               **THE COURT: Yes. You better write it right now.**

4               **MR. BYRD: Do you want some paper?**

5               **DEFENDANT POKE: Yeah.**

6               **MR. BYRD: Is he allowed to have a pen?**

7               **THE MARSHAL: We'll supply him with a pen.**

8               **DEFENDANT POKE: You're a good actor, man. You let the**  
9 **judge know somebody died in your family? That's why you**  
10 **weren't --**

11               **MR. BYRD: Yes, I did. He was aware of it from last**  
12 **week.**

13               **Judge, just so the record's clear, I explained in my**  
14 **attempt to meet with Mr. Poke this morning at 8:15 that part of**  
15 **the reason I was not able to get down to see him last week -- I**  
16 **wasn't even aware he was in McHenry County until Wednesday. I**  
17 **explained to him that I had a death in the family. My sister**  
18 **passed away. That took a substantial amount of my time. After**  
19 **we had her memorial service late on Wednesday, I immediately**  
20 **began getting ready -- continuing to get ready. I don't want**  
21 **the record to suggest that I haven't done anything to get ready**  
22 **for this trial prior to that date.**

23               **In pulling together and organizing the file, I had**  
24 **meetings with Mr. Karner and Mr. Ivancich on Friday to view the**  
25 **physical evidence. The weekend was largely spent shopping**

1       trying to find clothes for Mr. Poke and continuing to put the  
2       case together to get ready for trial. Unfortunately, I was not  
3       able to get out to Woodstock to meet with him

4               DEFENDANT POKE: What about court after last time?

5               MR. BYRD: After court last time?

6               DEFENDANT POKE: Yeah.

7               MR. BYRD: What do you want me to talk about?

8               DEFENDANT POKE: I mean, why didn't you meet with me?  
9       Why you ain't prepared nothing with me? You know we had trial  
10      on the 25th.

11              MR. BYRD: I met with Mr. Poke after court last time.  
12      We had an initial meeting that didn't go well. As the court may  
13      recall, he was unhappy with my efforts, and that was the whole  
14      issue of preparing the motion to have me removed. I was  
15      asked -- after I had the plea hearing in front of your Honor at  
16      10:00, court with Magistrate Mahoney at 11:00, I was advised  
17      that Mr. Poke wanted to meet with me. I met with him probably  
18      close to a half hour, 45 minutes, and at that point in time I  
19      felt that our relationship was doing much better, and there was  
20      no indication that he wanted me to prepare a motion to withdraw  
21      or anything like that. Is that correct?

22              DEFENDANT POKE: No, that's not correct.

23              MR. BYRD: You wanted me to prepare a motion?

24              DEFENDANT POKE: Yeah, I did. Yeah.

25              MR. BYRD: You didn't indicate that to me.

1           **DEFENDANT POKE:** And I told him if he's willing on  
2 cooperating with me to get through this trial, we can proceed  
3 with the trial, but if he's not going to help me proceed through  
4 the trial, then just withdraw from the case. I'm not scared of  
5 going to trial. I understand what I'm facing. But if I don't  
6 got no help, it's no reason -- I mean, how can I go?

7           **MR. BYRD:** Judge, after that day, there were numerous  
8 e-mail communications between Mr. Poke and myself through the  
9 system known as Corrlinks that is set up at MCC where we  
10 continued to discuss what the strategy of the case would be,  
11 what the plan was to be, and in none of those e-mails was I ever  
12 asked to file a motion to withdraw.

13           **DEFENDANT POKE:** No, because you just said you talked  
14 to me for 45 minutes. It wasn't through the e-mail. It was  
15 during the 45 minutes, right?

16           **MR. BYRD:** But we had further communication about the  
17 trial.

18           **DEFENDANT POKE:** Because, your Honor, I addressed other  
19 issues asking him -- telling him okay. I'm willing on working  
20 with you with the trial. This is what I feel like we need to  
21 do, why we need to do it, even my clothes size.

22           I'm not ducking trial, but if I don't got a counsel  
23 that's in my best interests who's just trying to talk to me when  
24 I get here to court and I don't know nothing, I can't go to  
25 trial. I mean, I don't know nothing.

1           **THE COURT:** Write down the reasons that you feel  
2           **Mr. Byrd is not qualified and able to adequately represent you,**  
3           **and when you come back to court, I'll look at it, and we'll sort**  
4           **it out.**

5           **DEFENDANT POKE:** Okay. I got one more thing, your  
6           **Honor. I mean, I feel like we shouldn't even be at this point,**  
7           **anyway, because my lawyer talked me into going into it with the**  
8           **government, to sign the proffer, telling me it's in my best**  
9           **interests. I disclosed an amount of information to the**  
10          **government, you know what I'm saying, murders, drugs, people**  
11          **selling guns, in return for a plea deal. And then at this point**  
12          **they never -- I mean, I don't understand it. I don't understand**  
13          **nothing. Because he got me doing one thing, and all this other**  
14          **stuff going on. I don't know what's going on.**

15               **And then he got me thinking that I'm going to get a**  
16          **fair plea deal or something. Now here he is. I'm dressed up.**  
17          **They talking about trial. This was what? Thirty days ago? How**  
18          **was you preparing for trial when you had me inside signing a**  
19          **proffer and disclosing information about things in return for a**  
20          **plea deal?**

21               **MR. BYRD:** Does your Honor want me to address that?

22               **THE COURT:** Yes. I'll ask you both to address it.

23               **MR. BYRD:** Judge, a couple months ago -- I believe it  
24          **was probably when we were in here in late January for the final**  
25          **pretrial. Though, I could be mistaken. That's my recollection.**

1 Mr. Poke indicated to me that he -- we had discussions about the  
2 possibility of a proffer. As I tell all my clients, I explain  
3 to them the proffer situation, that they get a letter explaining  
4 that there are no promises or representations made until they  
5 hear what the individual has to say and then have an opportunity  
6 to evaluate that information.

7 In fact, Mr. Poke -- and I take no position. I tell my  
8 clients, every one of them, that I've had clients that it's  
9 worked out wonderfully for. I've also had clients that it  
10 hasn't worked wonderfully for. It's up to them, what they know.  
11 They always have to be completely truthful, or the government is  
12 not going to make any type of an offer on the case.

13 Mr. Poke provided me with several names of individuals  
14 I had never heard of and asked me to go talk to Mr. Karner and  
15 Agent Ivancich and give them those names. I did give them those  
16 names. Agent Ivancich appeared somewhat interested. I was  
17 contacted a couple days later indicating that they'd like to set  
18 that proffer up. I spoke with Mr. Poke about it. He agreed.  
19 We had a nice long meeting here in this courtroom -- or not in  
20 this courtroom -- in this courthouse, where numerous agents were  
21 in attendance. Agent Ivancich, Chief Deputy Mark Jurasek from  
22 the -- or Detective Jurasek from the Winnebago County Sheriff's  
23 Department, Special Agent Craig Smith from the FBI, myself,  
24 Mr. Poke. It was probably a two-hour long meeting where  
25 Mr. Poke provided a lot of information. As he indicated,

1 information about murders, drugs, guns, dealings, and all of  
2 that in the Rockford area. I told Mr. Poke that the protocol is  
3 that we wait a couple of weeks or however long, a few days,  
4 until the government has an opportunity to evaluate the  
5 information.

6 The next thing that I heard was several days later,  
7 Mr. Karner indicating that he had spoken with Mr. McKenzie.  
8 They had reviewed the information, and there was no offer that  
9 they were prepared to make Mr. Poke at this time. When I  
10 inquired a little bit further -- and I don't want to speak for  
11 the government -- I was led to believe that they didn't believe  
12 that Mr. Poke was truthful about his involvement in this case  
13 that's pending before the court, and they felt that he was  
14 holding back information regarding a relative of his who was a  
15 former client of mine. And as far as the government's position  
16 beyond that, I'm not competent to speak to.

17 THE COURT: Mr. Karner.

18 MR. KARNER: I agree with -- first of all, I agree with  
19 what Mr. Byrd says is accurate. I did review the results or the  
20 statements made by the defendant during his proffer-protected  
21 interview. And it's our position, number one, he was not  
22 truthful about his involvement -- his description of his  
23 involvement in this case, that he wasn't truthful in the  
24 description of a murder that he discussed, based upon my  
25 familiarity with the results of that investigation.

1           In addition, nothing provided -- even if we were to  
2           accept the defendant's statements as true in the proffer, he  
3           provided us with no information that would allow us to establish  
4           provable criminal cases against third-parties. So, based on  
5           that, we were not in a position to offer him any percentage --  
6           agree to any percentage reduction in the guideline range  
7           sentence to the court. I mean, we never have gotten to the  
8           point of where we've actually discussed a plea agreement because  
9           my understanding is -- and he can correct me if I'm wrong, but  
10          my understanding is the defendant's not willing to plead guilty  
11          unless we were to agree to a substantial percentage off of the  
12          guideline range, and we're not willing to do that.

13           MR. BYRD: Judge, part of Mr. Poke's concern --

14           DEFENDANT POKE: Excuse me. Excuse me, your Honor.

15           THE COURT: Let Mr. Byrd talk, and I'll let you talk.

16           DEFENDANT POKE: Yes, sir.

17           THE COURT: We'll all take turns.

18           DEFENDANT POKE: Yes, sir.

19           MR. BYRD: Part of Mr. Poke's concern is that in that  
20          proffer, notwithstanding the fact that the letter advises that  
21          the information cannot be used against him unless he takes a  
22          contrary position to what was stated in the proffer, either at  
23          trial or at sentencing, that he made admissions during that  
24          proffer that the government may very well intend to try to use  
25          against him if he testifies in this case, which is in the

1 letter. We discussed the letter. We all signed the letter. I  
2 don't believe I forced Mr. Poke or did anything other than  
3 explain to him what was involved in doing a proffer and how the  
4 information can be used against him later.

5 Mr. Karner is correct. We were looking to derive a  
6 substantial benefit, and certainly I don't have the intelligence  
7 of local crime in the area that the various agents that were  
8 present or the U.S. Attorney's Office would have. I left the  
9 meeting feeling as though Mr. Poke, with great emotion,  
10 explained a lot of information about several murders, about gun  
11 trafficking, about drug trafficking in the Rockford area, but at  
12 no point do I believe that I ever encouraged him or forced him  
13 to go into this proffer meeting. It was at his suggestion that  
14 I first approached Mr. Karner and Agent Ivancich with names of  
15 individuals I knew nothing about and had never heard of before.

16 If I could say one thing with respect to Mr. Poke's  
17 earlier comments about a witness, Stonewall Jackson (sic), that  
18 he wanted to have called, who I made numerous efforts to try to  
19 contact via telephone, could not get a return call from him I  
20 did not at any point nor do I have the power to send an ATF  
21 agent out to interview a witness. He was disclosed, and I think  
22 Mr. Poke doesn't understand that in order to be able to call  
23 witnesses, we have to disclose them to the government as being a  
24 potential witness in the case so that it can go on the witness  
25 list and there are no surprises come trial time. They happened

1 to get to Mr. Jackson -- or I mean Pittman -- and interview him  
2 before I could get him to call me back. Now he's not calling me  
3 back. That's why Mr. Pittman is not served in the case or is a  
4 witness in the case at this point.

5 MR. KARNER: May I add one thing, Judge?

6 THE COURT: Yes.

7 MR. KARNER: We have notified the defense that if they  
8 pursue a defense of personal use that that would be inconsistent  
9 with some of the statements -- potentially inconsistent with  
10 some of the statements in the proffer interview, and we've put  
11 them on notice that we do intend to present some of those  
12 statements to the jury in rebuttal should they pursue a personal  
13 use defense.

14 DEFENDANT POKE: You see what I'm saying? At the same  
15 time, your Honor, my lawyer never broke all that down to me like  
16 that. All he told me is if I admit to this case, that's the  
17 only way they was going to talk, and I told him I'm not going to  
18 do that because that's not my gun, you know what I'm saying. He  
19 further asked me again to admit to it, and I told him well, you  
20 know, I ain't going to talk to them because I'm not going to  
21 admit something that ain't mine. Then he told me, "You might as  
22 well go in there. It can't hurt you. All it can do is help  
23 you," if he feel like he ain't convinced me, man.

24 And plenty of times while I was in there before we even  
25 got started, once the government tried to force me to admit to

1 the gun, I'm in tears crying asking him to escort me out of  
2 there, and they never did. The government walked out and told  
3 him to get me under control. He sat me. He smoothed me through  
4 it. And then as I agreed to continue to sit, thinking he's  
5 going to help me out in there, they badger me in there, and he  
6 never said nothing. He never defended me one time.

7 So, at the same time -- and then from that point we  
8 jumped right into trial. I don't -- I mean, I don't --  
9 honestly, I don't know what's going on. And that's what I'm  
10 trying to get to a point is either, man, I need to start over  
11 with somebody who's going to help me and I know everything  
12 what's going on, or I just see him let this man railroad me  
13 through trial. I at least want a fair chance.

14 THE COURT: Well, wasn't there a letter that he showed  
15 you, a proffer letter?

16 DEFENDANT POKE: I just signed it. He told me about  
17 it. He ain't -- he ain't running through me. He just told me  
18 anything I admit to the proffer can be used against me at trial.

19 THE COURT: Didn't you read the letter?

20 DEFENDANT POKE: No. He never -- he just told me to  
21 sign it. He told me I don't have to worry about reading it.  
22 They going to sign it or something once we get upstairs. It's a  
23 rush job with him. It wasn't like he sat down -- he sat down  
24 with that piece of paper five minutes before it was time to go  
25 upstairs and "Come on. We need to hurry up," same thing as he

1       doing -- same thing he do every time I come to court. He want  
2       to sit down right there for five minutes and run me into court.  
3       He never sat down with me and explained none of this stuff to  
4       me. And neither time have we ever been in that room anywhere  
5       close to an hour. Never.

6               THE COURT: Mr. Karner?

7               MR. KARNER: Judge, in response to what Mr. Poke just  
8       said, while I don't know the conversation that occurred between  
9       him and his lawyer, I do know the conversation that I had with  
10      Mr. Poke in the presence of his lawyer and investigating agents,  
11      and prior to questioning the defendant in the proffer, I  
12      explained the terms of the proffer letter to Mr. Poke.

13              DEFENDANT POKE: No. No, he did not, sir.

14              THE COURT: You're saying he did not?

15              DEFENDANT POKE: No, he didn't. They went in straight  
16      into questioning me about my case. He never -- this what he  
17      explained to me. The government saying here, to get over on me,  
18      they're not trying to trick me or none of this. We're going to  
19      help you, and we promise you. I mean, it was all a bunch of  
20      lies. They promised me a plea deal, and then here we is. We  
21      sitting here. I don't even got no copy of the proffer, the  
22      statements, or none of that stuff. I mean --

23              THE COURT: Mr. Karner, did the government ever promise  
24      him a plea deal?

25              MR. KARNER: No. There was no -- we specifically said

1       there was no promises other than those contained in the  
2       substance of the proffer, and that is if he told us the full and  
3       complete truth, what he told us couldn't be used against him in  
4       the guilt and innocence phase of trial or in aggravation of the  
5       sentence. We also explained the terms of the proffer, that  
6       should he withhold information or deemed to be untruthful, then  
7       all bets were off and that the substance of the proffer could be  
8       used against him in a trial or in aggravation of his sentence.

9               THE COURT: You mentioned, Mr. Poke, that it wasn't  
10       your gun, but I think I'm correct in saying that ownership of  
11       the gun isn't the critical fact. It's possession of the gun.  
12       In other words, you can possess somebody else's gun.

13              DEFENDANT POKE: Let me rephrase that. I didn't know  
14       the gun was in the car.

15              THE COURT: All right.

16              DEFENDANT POKE: And he correct. He didn't promise me  
17       a plea. He promised me -- he promised me -- he ain't promised  
18       me how much they was going to help me. He promised me I -- he  
19       told me he couldn't tell me what they can do for me, but it  
20       would be something did. That's what he promised me.

21              THE COURT: It would be some deal?

22              DEFENDANT POKE: I mean, he ain't promised me a set  
23       time, but he promised me something will be taken care of. I  
24       gave him details. We in there two hours. I mean, if he can  
25       bring somebody here that shows that I lied about anything -- he

1        wanted me to put somebody on the crime scene of a murder, and I  
2        told him I'm not going to that. He wanted the truth, and I gave  
3        him the truth. He wanted me to put somebody there that wasn't  
4        there because it's somebody he got a vendetta with of prior  
5        cases where he told me this guy got off with some things, and he  
6        want him And I told him no, he wasn't there. I don't got no  
7        knowledge of him being there, and I'm not going to put him  
8        there. So, that's what turned the whole thing against me  
9        because he wanted me to lie on the guy, and I told him I  
10       wouldn't do it, and I still ain't going to do it.

11                THE COURT: Mr. Karner, did at any time you or anyone  
12       else from the government tell Mr. Poke that if he talked, he  
13       would get some kind of deal?

14                MR. KARNER: No.

15                DEFENDANT POKE: Look. You think I was going to a  
16       proffer talking for two hours, I been locked up two years, with  
17       not an offer? That don't even make no sense, your Honor.

18                THE COURT: Well, it would make sense to me if there  
19       was a hope by you that you could get some type of consideration.

20                And, by the way, at sentencing in the case, just  
21       because the government doesn't make a motion under 5K1.1 for a  
22       departure, that doesn't mean that I as the sentencing judge, if  
23       it did go to sentencing, would not be able to consider in  
24       mitigation your attempts to cooperate. So, the benefit that you  
25       do get by attempting to cooperate is not limited solely to what

1 the government's motion is. You could present evidence in court  
2 that you attempted to cooperate, and if I thought that that was  
3 worthy of some mitigating consideration, I would give it to you.

4 But I need to get going here with these warrants.  
5 Mr. Poke, you'll have to step out and put together your motion.  
6 Mr. Byrd, you're going to have to prepare my material witness  
7 warrant. And, Mr. Karner, you're going to have to prepare my  
8 bench warrant.

9 MR. KARNER: Yes, sir.

10 MR. BYRD: I'll do that and get back as quickly as I  
11 can.

12 THE COURT: Right now. Yes, please. As quickly as you  
13 can.

14 (Brief recess.)

15 THE COURT: All right. Show all parties appear.

16 I've been presented with an arrest warrant prepared by  
17 the government and a warrant for arrest of a witness or a  
18 material witness in a pending criminal case. I will sign both  
19 of those.

20 All right. Mr. Poke, do you have your motion for me?

21 (Said document was tendered to the court.)

22 THE COURT: All right. I suppose I should prepare a  
23 copy. Tim, can you ask somebody in my chambers to prepare a  
24 copy? We need two copies of this. Why don't you have a seat  
25 until we get those copies back.

1           **(Brief pause.)**

2           **THE COURT:** All right. Step up again, please.

3           All right. Mr. Poke alleges five -- or seven grounds  
4 which he feels entitles him to substitute counsel. The first  
5 one is he never sat down with me but one time to go over my  
6 discovery. How do you respond, Mr. Byrd?

7           **MR. BYRD:** Judge, I disagree with that. We've  
8 discussed the discovery in at least initially one meeting that  
9 we had at the MCC early in the case after I received the  
10 discovery.

11           But it's been an ongoing discussion of the discovery  
12 throughout the case. We had an extensive motion to quash arrest  
13 and suppress physical evidence that was heard by your Honor  
14 where numerous officers were called. There were several  
15 discussions between myself and the defendant about those reports  
16 and problems with those reports. Many of the things that were  
17 in the reports he alerted me to because I was not his first  
18 attorney. Mr. Gaziano had this case before that. My  
19 understanding was that the defendant had been provided with  
20 discovery by Mr. Gaziano, and somewhere in the transmission of  
21 him from Ogle County to MCC, that material was thrown out.

22           And after that, I answered requests from Mr. Poke to  
23 send him copies of things. I have letters and copies of  
24 discovery and items that were sent to him. If I receive a  
25 response for something, I get it out to the defendant. We sent

1 him disks. It's my understanding they have a computer down  
2 there.

3 And we really do discuss elements of this case and the  
4 discovery and strategy each and every time I see him here in  
5 court and each and every time we communicate via e-mails. I  
6 believe the e-mails will bear that out. Most recently within  
7 the last week he e-mailed -- or ten days or so -- he e-mailed me  
8 indicating he was stressing because he wasn't sure what the  
9 strategy was. I responded to him that the strategy was going to  
10 be largely the same as it was in the motion to suppress hearing.  
11 I disagree that there's only been one time that I've gone over  
12 his discovery with him

13 THE COURT: All right. Let me say that if at any point  
14 you feel that you are going to have to respond or either of you  
15 are going to have to make representations that would prejudice  
16 you during the trial of the case, I will ask the government to  
17 leave the courtroom

18 All right. Mr. Poke, how do you respond to what  
19 Mr. Byrd said?

20 DEFENDANT POKE: He only sat down with me with my  
21 discovery one time. Everything else he just said, yeah, we  
22 mentioned it, but as far as him sitting down with my discovery,  
23 going over everything with me, he only did it one time.

24 That's what he asking you. How many times you sat down  
25 with me with the paperwork.

1           **THE COURT:** Why is Mr. Gaziano not on the case?

2           **DEFENDANT POKE:** Because Mr. Gaziano did the same  
3 thing. He refused to sit down with me and go over my discovery,  
4 and then information that I gave him like my affidavit, I gave  
5 him a copy of the affidavit, he gave the copy of the affidavit  
6 to the government. So, everything that I disclosed to him he  
7 gave it to Mark Karner.

8           **THE COURT:** Did you ask that he be replaced?

9           **DEFENDANT POKE:** Yes.

10          **THE COURT:** And so, this is the second time you're  
11 asking for your attorney to be replaced?

12          **DEFENDANT POKE:** Yes.

13          **THE COURT:** All right. Anything more you want to say,  
14 Mr. Byrd, about the first allegation?

15          **MR. BYRD:** No, your Honor.

16          **THE COURT:** The second allegation. He never sent me  
17 all my discovery and I asked several times. Mr. Byrd?

18          **MR. BYRD:** Judge, I believe I sent Mr. Poke numerous  
19 disks containing his discovery. He specifically after the  
20 suppression hearing or before the suppression hearing -- I'm not  
21 sure which -- requested copies of all the photographs and the  
22 reports and a copy of Mr. Cistrunk's affidavit. Again, because  
23 it's my understanding he was in possession of all those items  
24 prior to being moved from Ogle to -- from Ogle County Jail to  
25 the Metropolitan Correctional Center, and it's my understanding

1       that those items were thrown out when he arrived at the  
2       Metropolitan Correctional Center, and I have sent him everything  
3       that he requested, I believe.

4               Just going through the discovery this weekend, I  
5       encountered letters to him "Enclosed please find this per your  
6       request." Disks, photos, the affidavit, the reports. I'm not  
7       sure what it is that he's lacking and wanted a copy of that he  
8       didn't receive. That's all I know about that.

9               THE COURT: Is there anything that has been disclosed  
10      to you by the government that you have not conveyed to Mr. Poke?

11              MR. BYRD: I don't believe so. I mean, the discovery  
12      in this case is pretty well limited to the police reports, the  
13      findings of various laboratory results, things like that. I  
14      don't know that I've gotten him each and every one of those  
15      things, but at least the reports. He's had the photographs that  
16      were taken. The affidavit from Mr. Cistrunk he's had. And I  
17      believe there are other items, as well, that was provided to  
18      him

19              In fact, when we were in court earlier, I think it was  
20      disclosed back in January, text messages that the government had  
21      retrieved from the defendant's cell phone, as well as  
22      transcripts that were prepared of conversations that Mr. Poke  
23      had when he was being housed at the Winnebago County Jail before  
24      this case became a federal matter. And I specifically recall  
25      giving Mr. Poke copies of all of those in court or after court

1 down in the Marshal's Office and indicating to him that there  
2 were certain things in there that caused me some concern that he  
3 was going to have to be prepared to address if he testified.  
4 That's my belief. I don't believe there's any substantial  
5 discovery that hasn't been provided once he's asked or if he's  
6 asked.

7 THE COURT: Okay. And I'll let you respond, Mr. Poke,  
8 but let's go back to this first allegation. By the way, there  
9 are nine allegations, not seven. The last two are on the  
10 opposite side of the page.

11 You say Mr. Byrd never sat down with you but one time  
12 to go over your discovery. What else do you need to go over  
13 with him that you haven't gone over with him so far?

14 DEFENDANT POKE: We never went over none of the jury  
15 transcripts, the grand jury transcripts. We never went over  
16 none of that stuff. We never went over the ATF agent, his grand  
17 jury transcripts. We never went over none of the phone  
18 conversations. We never went over the people who they had come  
19 to the grand jury. We -- I mean, I can go on and on. We never  
20 went over none of that stuff.

21 THE COURT: Okay. Well, I want you to tell me  
22 everything.

23 DEFENDANT POKE: You know, I don't know the name of all  
24 the paperwork, but like as far as the grand jury transcripts and  
25 people who they interviewed or phone conversation or supplement

1 reports, we went over none of that stuff.

2 THE COURT: Did you review the grand jury transcripts?

3 MR. BYRD: Judge, my understanding from what I've been  
4 disclosed, there were essentially two witnesses in the grand  
5 jury, Amy Favors and Special Agent Ivancich. My recollection is  
6 that we did discuss that information. The very first meeting I  
7 had with Mr. Poke we discussed Amy Favors' testimony and what  
8 she had said in the case and how it might help or hurt him. As  
9 far as Special Agent Ivancich's testimony, I believe we've  
10 discussed that, as well. Again, those transcripts would only be  
11 necessary for impeachment purposes and possibly to call Special  
12 Agent Ivancich as a substantive witness, which I believe we may  
13 very well end up doing in this case.

14 There's certainly -- I don't recall there ever being a  
15 request made by the defendant that we needed to sit down and  
16 review Special Agent Ivancich's grand jury transcripts. The  
17 defendant had those in his possession originally when discovery  
18 was provided. We then provided additional discovery in the form  
19 of the disks after he was moved to MCC. Those were mailed to  
20 him

21 And I don't see this as a big issue. Again, if it had  
22 been brought to my attention that he wanted to discuss something  
23 in Special Agent Ivancich's transcript from the grand jury, I  
24 certainly would have done that. I'm not -- I don't have any  
25 problem with Mr. Poke. I'm not trying to sabotage his defense

1 here. And I've attempted to respond to each and every request  
2 that he's made of me, except for number three, and I can explain  
3 that in a little more detail.

4 THE COURT: Okay. We'll get to that.

5 All right. And as to two, what discovery is out there  
6 that he hasn't sent you, Mr. Poke?

7 DEFENDANT POKE: I never got the government response to  
8 the post memorandum motion.

9 MR. BYRD: Motion to suppress.

10 DEFENDANT POKE: Yeah. I never got that stuff. I  
11 asked him for all the motions the government put in against me.  
12 I asked him for all the motions we put in, you know what I'm  
13 saying. They call it something like the Brady letter or  
14 something. I wanted to go over all these things before we set a  
15 trial date. The ATF agent, that grand jury report, we just got  
16 that in September. So, you never got a chance to go over that  
17 with me. So, you just told the judge you did.

18 MR. BYRD: The only thing that the September grand jury  
19 did was modify the amount from 4.3 grams of cocaine --

20 DEFENDANT POKE: No.

21 MR. BYRD: -- to 1.2 grams of cocaine. It was a very  
22 short transcript that has no --

23 DEFENDANT POKE: No.

24 MR. BYRD: The original Ivancich transcript was from  
25 the time that the defendant was initially indicted on the

1 original indictment.

2 DEFENDANT POKE: That's the whole new discovery where  
3 they talked to the witness and all that stuff. I never got a  
4 chance to go over with him with the stuff that they interviewed  
5 the witness over the phone. We never talked about that stuff.

6 THE COURT: Well, who has the -- do we have a second  
7 grand jury transcript here?

8 MR. KARNER: I disclosed it to Mr. Byrd, Judge.

9 THE COURT: Do you have it?

10 MR. KARNER: Not with me, but it's in my office.

11 DEFENDANT POKE: I mean, it's so much stuff that we  
12 ain't --

13 THE COURT: Well, why don't we look at it? Can you get  
14 it for me?

15 MR. KARNER: Yes, sir.

16 MR. BYRD: I may have it.

17 THE COURT: Could you look?

18 MR. BYRD: I sure will.

19 (Brief pause.)

20 THE COURT: Mr. Poke, what makes you think that there's  
21 more than just reducing the amount of cocaine base?

22 DEFENDANT POKE: Because I got a copy of it, and I read  
23 it, and I told him -- I said I think we need to sit down and go  
24 over some of these things that been talked about at the grand  
25 jury.

1           THE COURT: Well, wait, wait, wait. You just -- what  
2 we're talking about right now is he didn't give you all of your  
3 discovery.

4           DEFENDANT POKE: Oh.

5           THE COURT: And I asked you what things he didn't give  
6 you, and you said the second grand jury transcript, and now --

7           DEFENDANT POKE: No.

8           THE COURT: And now Mr. Byrd tells me --

9           DEFENDANT POKE: I misunderstood.

10          THE COURT: You're interrupting me. Stop interrupting  
11 me, and I won't interrupt you.

12          Mr. Byrd tells me, well, the only thing that was in  
13 that second grand jury transcript was the reduction of the  
14 amount of cocaine base, and I'm having him get it right now to  
15 find out whether that's true or not, and now you told me, well,  
16 I've reviewed it, and that's inconsistent with what we're  
17 talking about right now. First you tell me you didn't get it.  
18 Now you tell me you did get it.

19          DEFENDANT POKE: Your Honor, I misunderstood, because  
20 you jumped back and forth from a couple of different things.  
21 So, when I was talking about the motion stuff --

22          THE COURT: We're not talking about the motion stuff.

23          DEFENDANT POKE: That's what I was talking about when I  
24 said -- you asked me what I didn't get. You told me that. And  
25 you asked me what he ain't go over with me. I was just naming

1 the things that we ain't went over. I mean, I got confused. I  
2 mean, I went over it, but I didn't go over this stuff with him  
3 This stuff we still need to go over before trial.

4 MR. BYRD: Judge, this was disclosed back in January of  
5 I believe this year. It's eleven pages. There is a little more  
6 in it than the 1.2 grams, but my recollection is that is why it  
7 was presented, and it's essentially the same testimony that  
8 Mr. Poke and I discussed prior to the suppression hearing.

9 DEFENDANT POKE: We got that after the suppression  
10 hearing.

11 MR. BYRD: Right. I know. But he did the original  
12 grand jury, and it was essentially the same --

13 DEFENDANT POKE: No.

14 MR. BYRD: -- except for the change.

15 DEFENDANT POKE: No, it's not. It's not, see.

16 MR. BYRD: Well, how do you know if you haven't seen  
17 it?

18 DEFENDANT POKE: No. I told you I seen it. I told you  
19 we need to go over it. They ain't never the same. The grand  
20 jury reports, the first one and the second, is totally  
21 different.

22 THE COURT: All right. So, you did see the second  
23 grand jury transcript.

24 DEFENDANT POKE: Yeah, I did.

25 THE COURT: All right. As far as the response to the

1 motion to suppress?

2 MR. BYRD: I'm sorry?

3 THE COURT: The government's response to the motion to  
4 suppress. Mr. Poke says he never received that.

5 MR. BYRD: I don't recall. I'd have to look through my  
6 notes and see if he did or not. It was shortly after that  
7 response was put in that your Honor ruled, and he was brought  
8 back to court within a day or two after the ruling. At that  
9 point I don't recall if I provided him with that or not, but  
10 your Honor had already ruled on it. I'm not sure.

11 THE COURT: Could you provide him with a copy?

12 MR. BYRD: I'd be happy to.

13 DEFENDANT POKE: I mean, everything that I'm asking  
14 here, I knew it was going to come to this. That's why I sent  
15 all them e-mails prior before this court date so he can't say I  
16 never talked to them things. I mean, tomorrow he could bring a  
17 copy of the e-mails that I sent to him about everything I was  
18 asking for and everything that I was talking that I told him we  
19 need to go over before trial and things that we ain't go over.

20 THE COURT: Sounds to me that there's been quite a bit  
21 of communication between you and Mr. Byrd.

22 DEFENDANT POKE: No. He ignore me, but I just keep  
23 sending them so I can get it on record that I tried to  
24 communicate with him about these things, why he wouldn't come in  
25 here and say that I'm lying or any of this stuff, because I know

1       that's what it was going to come to. And I'm pretty sure he got  
2       copies in his master file of my e-mails.

3               MR. BYRD: I should have a copy of all the e-mails.

4               DEFENDANT POKE: Yeah.

5               THE COURT: All right. Let's go to number three.  
6       Before trial I told him -- I can't read that word. That looks  
7       like --

8               MR. BYRD: To put in some more motion before we set a  
9       trial date.

10              THE COURT: That's two?

11              MR. BYRD: No, number three, sir. Before trial --

12              THE COURT: No. I told him -- it looks like l-e-f, but  
13       you say that means two?

14              DEFENDANT POKE: I told him let's put in some more  
15       motion.

16              THE COURT: Oh, let's.

17              DEFENDANT POKE: Yeah, let's.

18              THE COURT: Put in some more motion before we set a  
19       trial date. What did you want him to put in? What motion did  
20       you want him to file?

21              DEFENDANT POKE: The investigative detention and the  
22       Terry stop.

23              THE COURT: Well, those are the same thing.

24              DEFENDANT POKE: Yeah. I mean, yeah, that's what I'm  
25       saying.

1           **MR. BYRD:** Judge, if I can explain. After Detective  
2           **Pruitt testified in the suppression hearing that it was his**  
3           **intention to pull the defendant over whether he had failed to**  
4           **signal or not, Mr. Poke wanted to explore filing a motion to**  
5           **challenge the stop as being a pretextual stop. I provided**  
6           **him -- I did research. I discussed that with him, told him that**  
7           **I did not believe that that motion was well grounded in existing**  
8           **law based upon a U.S. Supreme Court case back in 2010, the name**  
9           **of which escapes me at the moment, which essentially -- as well**  
10          **as numerous Law Review articles and treatises that I reviewed,**  
11          **suggesting that there is essentially no such thing as a**  
12          **pretextual traffic stop after that 2010 case. I provided that**  
13          **case and an explanation of it to Mr. Poke, and I believe his**  
14          **next e-mail to me indicated that he was satisfied that that was**  
15          **not, in fact, a valid motion.**

16                Then he wanted to go back and file another motion to  
17          challenge whether or not he, in fact, had failed to signal  
18          before turning into the residential driveway. Essentially, go  
19          back and relitigate the suppression issue, but take on a new  
20          dimension that he had, in fact, signaled. I discussed with him  
21          that I believed that that would be a horrendously bad idea for  
22          several reasons, one of which he had the opportunity to present  
23          that. And we sat right in this very courtroom Mr. Poke sat  
24          there knowing where we were headed, and your Honor asked me  
25          whether or not there was a challenge to the traffic stop. I

1 believe we had discussed that.

2 DEFENDANT POKE: I object to -- I object to any of  
3 that. I object to any of that.

4 THE COURT: Stop interrupting. I'll let you talk.  
5 Please continue.

6 MR. BYRD: May I have a moment? What's the basis?

7 DEFENDANT POKE: What you mean? Because you sitting  
8 here, you saying that -- you sitting here lying saying that you  
9 told me all this stuff, and these the stuff I told you to  
10 challenge before you even put the motion in. You took this  
11 stuff upon yourself what you wanted to do. This is my life. If  
12 I ask him to do something -- I mean, I understand that the  
13 government appointed you to me, but if I ask him to do  
14 something, I don't want you to tell me after the fact that you  
15 done did something that you already wanted to do.

16 I been screaming the pretextual stop from the time that  
17 you been on the case. If you would have did research and find  
18 out that the warrant outlawed the pretextual stop, then we  
19 wouldn't have got this far after the judge making his decision  
20 for you to explain it to me. Don't try to twist everything  
21 around like I just don't know what I'm talking about. I do my  
22 own research. I do my own reading. They got NexisLexis in MCC.  
23 So, everything that he got -- the majority of the stuff I  
24 provided to you. And you going to sit up here and tell the  
25 judge like I don't -- basically I don't know what I'm talking

1       about.

2               **MR. BYRD:** Judge, if anything -- and, again, I'm  
3 somewhat uncomfortable with having to argue with Mr. Poke on the  
4 record. I don't want to say or do anything that's going to  
5 prejudice him in the eyes of the court. But one thing I think  
6 we could all agree on is that Mr. Poke is a defendant who has no  
7 problems voicing his displeasure with my efforts. He has no  
8 problem articulating to the court his complaints and his  
9 problems with me.

10              And I specifically recall on the day that we had that  
11 hearing your Honor asking me whether or not there was a  
12 challenge to whether or not Mr. Poke had failed to signal  
13 turning into the driveway, and I certainly would not say no and  
14 prejudice my client if there was any inclination or discussion  
15 that he had told me that he had not failed to signal and did, in  
16 fact, signal.

17              Moreover, he heard me say, "No, your Honor, there is no  
18 challenge to that." If there was a challenge to that, that  
19 would have been the appropriate time for Mr. Poke to then say,  
20 "Judge, that is absolutely not correct. I did signal. He's  
21 trying to prejudice me here, and I'm not going to allow it."  
22 That, of course, did not happen.

23              **DEFENDANT POKE:** Because at the time, your Honor, I  
24 wanted to try to -- I wanted Mr. Byrd to fight the case as the  
25 best he can without me interfering. You walked right over there

1 to the table once I looked at you, and when you said you wasn't  
2 challenging the stop, you told me -- you whispered to me and  
3 told me this ain't the time to challenge this right now. That's  
4 what you told me. And then afterwards when I told him why you  
5 ain't challenged the stop -- because I wasn't going to interrupt  
6 the courtroom because I wanted him to do what he do best, and  
7 then he hold me afterwards -- what you tell me? Oh, we're going  
8 to challenge that in appeal. And I say no, you --

9 MR. BYRD: No. I said we would challenge the judge's  
10 ruling on the motion to quash and suppress on appeal. But more  
11 importantly, too, the discussion that we had, I told him that --  
12 and this was after the fact because, again, it wasn't an issue  
13 prior to your Honor's ruling -- that, in fact, he was in a bad  
14 position on that because, one, he would have to testify in the  
15 hearing. He would have had to have testified.

16 DEFENDANT POKE: And I don't mind.

17 MR. BYRD: Second, it would have been his word as a  
18 multiple convicted felon against the word of two detectives with  
19 the Rockford Police Department with no independent witnesses out  
20 there to corroborate his testimony. I believe that had he gone  
21 that route, he would have lost, number one. Number two, he  
22 would have picked up a perjury enhancement or obstruction  
23 enhancement under Section 3C1.1 of the United States Sentencing  
24 Guidelines. And, more importantly, I don't create issues if I'm  
25 not instructed to, and I was never told that he had, in fact,

1        signaled. And he had the opportunity. He's not shy.

2                DEFENDANT POKE: Your Honor, right. So, you think I  
3        care about getting on the stand and telling my testimony to save  
4        my life? Your reputation on the line. My life is on the line.  
5        And you sitting up here, and you lying to the judge, and you  
6        plan -- I mean, listen. If you not going to fight the case, you  
7        sitting up here trying to fight to stay on the case --

8                MR. BYRD: I'm not fighting to --

9                DEFENDANT POKE: -- I mean, you might as well move on  
10       and let somebody go on and fight this case and let us get this  
11       case over with. But at the same time I can't sit here and go to  
12       trial with him and he not fighting. I know what I'm facing.  
13       I'm not running from this, you know what I'm saying. But at the  
14       same time what's going to hurt me is just letting him stroll me  
15       through here without a fight.

16               THE COURT: Let me explain something to you. I don't  
17       mean to speak for Mr. Byrd, but I think I'm pretty safe in  
18       saying that Mr. Byrd would not mind it at all if I let him off  
19       the case. That's not his decision to make, though. It's my  
20       decision to make. And I'm going to decide whether he stays on  
21       the case or not. All I'm doing is asking him questions and  
22       eliciting from him information that will help me to decide  
23       whether your motion should be granted.

24               DEFENDANT POKE: Right.

25               THE COURT: But don't be laboring under a false

1 impression that it's important to him to stay on this case, that  
2 he's fighting to stay on the case. He's just answering my  
3 questions.

4 DEFENDANT POKE: Right. I mean, I don't know, but, you  
5 know, I mean, it's upsetting me to sit here and listen to him  
6 just put on -- why you couldn't talk to me same way you relaying  
7 this stuff to the judge? Why you couldn't talk to me like this?  
8 Why didn't you let me know all these facts and details and stuff  
9 like you're doing the judge?

10 MR. BYRD: I believe, I had, number one.

11 DEFENDANT POKE: Man, come on, man. You in here  
12 playing, man. You a professional liar, man. You a professional  
13 liar, man.

14 MR. BYRD: For the record, I am not lying about any of  
15 this. I'm trying to recall things that have happened over the  
16 last two years or year and a half. My concern now is whether or  
17 not --

18 DEFENDANT POKE: You don't even know how long you been  
19 on the case. Last two years, year and a half.

20 MR. BYRD: You've been in since July 5th of 2011.

21 DEFENDANT POKE: Oh, man. When did you get on this  
22 case?

23 THE COURT: Let's go on to number four. Mr. Poke says  
24 you had not sit down and talked about no defense for trial.

25 MR. BYRD: Judge, he provided me with his defense on

1 the 924(c) and the 922 gun charges the day he presented me or  
2 told me about Daron Cistrunk's affidavit. That is his defense.  
3 That's his only defense.

4 These are difficult facts. I have an individual  
5 driving a car alone, no other people in the vehicle, with a  
6 loaded firearm, he's a convicted felon, and crack cocaine  
7 located in a center console of the vehicle. The defenses here  
8 are very limited.

9 On the very first day I told him that defending on the  
10 drug charge was going to be very difficult because of the fact  
11 that he is the only one in the vehicle and the vehicle has the  
12 crack cocaine in the center console. Later, after we obtained  
13 information from his cell phone records and text messages, there  
14 are problems with that because he appears to be -- and I know  
15 the government's position on it is going to be that he's quoting  
16 prices and offering to front somebody something. That's a very  
17 difficult case --

18 DEFENDANT POKE: What price? What price you heard me  
19 quote on there?

20 MR. BYRD: \$20.

21 DEFENDANT POKE: No. That don't say nothing like --  
22 no.

23 MR. BYRD: I tried to discuss that this morning with  
24 the defendant.

25 DEFENDANT POKE: How?

1                   MR. BYRD: Ask him how that went.

2                   DEFENDANT POKE: How? Because --

3                   THE COURT: Stop interrupting and let him talk. Then  
4 I'll let you talk. Please continue, Mr. Byrd.

5                   MR. BYRD: I attempted to discuss that further with him  
6 this morning, and the conversation lasted about a minute to a  
7 minute and a half because he was so upset with me -- it wasn't  
8 productive. I'll leave it at that. But I had to get up and  
9 walk out. It wasn't going anywhere.

10                  THE COURT: All right. Anything else you want to say  
11 about this point, Mr. Poke?

12                  DEFENDANT POKE: Man, I read the report. It never said  
13 nothing about no price or none of that.

14                  MR. BYRD: May I have a moment?

15                  DEFENDANT POKE: Yeah. And today I got upset with him  
16 because I asked him -- I don't even know did he contact the  
17 witnesses. I been having him -- from the time you left and told  
18 me --

19                  THE COURT: That's the next point. Let's wait before  
20 we go on to that.

21                  (Brief pause.)

22                  DEFENDANT POKE: Now, it's bad that we got to go over  
23 my report here. Why me and him couldn't do this someplace else  
24 and go over the report? Now we could have debated then what was  
25 said and what wasn't said. Man, this don't make no sense.

1           THE COURT: Well, the issue is you said that there's  
2 nothing in the report that mentions price.

3           DEFENDANT POKE: Yeah. Not that I remember, you know  
4 what I'm saying. If somebody asked me about --

5           THE COURT: Well, here's where we're at. He said  
6 there's something in the report that does mention price. You  
7 deny that. So, we're going to resolve it --

8           DEFENDANT POKE: Yeah.

9           THE COURT: -- and I don't have to rely on your  
10 credibility --

11          DEFENDANT POKE: No. No. I'm saying he said --

12          THE COURT: Please stop interrupting me. I'll let you  
13 talk. Please let me talk.

14          DEFENDANT POKE: Right. Right.

15          THE COURT: We can resolve it by looking at the report.  
16 Either he's right or you're right.

17          DEFENDANT POKE: Right. No. He said that I gave a  
18 price saying \$20. Somebody sent the e-mail. I never responded  
19 to no e-mail. So, by him saying that me gave a price of \$20,  
20 that's absurd. But if he would have sat down and went over the  
21 paperwork with me and quit looking for everything that's against  
22 me and start looking for things that can help me --

23          MR. BYRD: These are text messages off your phone.

24          DEFENDANT POKE: Right. That I sent?

25          MR. BYRD: There's some that are --

1                   **DEFENDANT POKE:**   How long?   How long?   That I sent  
2   saying it cost \$20?

3                   **MR. BYRD:**   This purports to say just that.

4                   **DEFENDANT POKE:**   Where?

5                   **MR. BYRD:**   Right here.

6                   **DEFENDANT POKE:**   I sent?   Is it a sent, or is it from  
7   somebody?

8                   **MR. BYRD:**   There are -- hang on.

9                   **DEFENDANT POKE:**   You looking for the government to help  
10   you.   You on my side.   You supposed to be on my side, and you  
11   over there --

12                  **MR. BYRD:**   No.   I'm asking if this is the right  
13   transcript.

14                  **DEFENDANT POKE:**   How?   You went over this stuff?   How  
15   you going to ask him if he the right -- you make yourself look  
16   bad.

17                  **MR. BYRD:**   Well, I don't think so.

18                  **DEFENDANT POKE:**   You going to go ask the government if  
19   that's the right --

20                  **MR. BYRD:**   There's a message on June 27th inbox, which  
21   my understanding is means you received it in your inbox on your  
22   phone, that says, "Who is this?"   Approximately 17 seconds later  
23   you respond -- it says type failed, but the body of the text was  
24   Day Low, which is my understanding that's --

25                  **DEFENDANT POKE:**   Get to the \$20 thing.   Where the \$20

1        thing at? You want to hold them two different numbers. Quit  
2        trying to manipulate the courtroom here.

3                MR. BYRD: I'm not trying -- on July 5th, okay, at  
4        3:10 a.m you received an inbox from somebody's number that says,  
5        "I get paid Friday. You front me?"

6                DEFENDANT POKE: That's not me.

7                MR. BYRD: I know. It's somebody saying, "Will you  
8        front me?"

9                DEFENDANT POKE: Right. Right.

10               MR. BYRD: And then three minutes and ten seconds  
11        later, it says sent, which my understanding is somebody with  
12        that phone then sent a response that says, "Yes, I got. That's  
13        cool." Then at 3:15:51, approximately two minutes later,  
14        there's an inbox to you that says, "You sure? How much is the  
15        prices?" And then at 3:16:37, about 40 seconds later, it says  
16        sent, and the body of it is 20 with a dollar sign.

17               DEFENDANT POKE: But my name ain't on that. And what  
18        number is that?

19               MR. BYRD: It's the number off the cell phone.

20               THE COURT: Okay. Thank you, Mr. Byrd.

21               Let's go to the next allegation. It says we never  
22        talked about what witnesses we were going to call.

23               DEFENDANT POKE: Now, if you would have talked about  
24        that with me instead of right here in the courtroom --

25               THE COURT: Mr. Poke, you're not even listening to me.

1       We're going on to the next allegation. We never talked about  
2       what witnesses we going to call and why.

3               MR. BYRD: Judge, we had Daron Cistrunk as a witness.  
4       He provided me with the name of Stonewall Pittman as a witness  
5       back in January when the witness was given to you. Since then  
6       and in the last week or so, he's listed several other witnesses  
7       or at least one other witness that he wanted subpoenaed. I  
8       already explained my attempts to try to get ahold of  
9       Mr. Pittman. He won't return my calls. The other witness is a  
10      nurse down at the Ogle County Jail, who I have not had a chance  
11      to talk to yet because the request came in late.

12             I had several e-mails sent to Mr. Poke, as well as  
13      meetings earlier in this case, where I explained to him that I  
14      needed to have the witnesses and what he expected they were  
15      going to testify to earlier on so that they would have time to  
16      be subpoenaed and they could be disclosed.

17             One of the problems I think that Mr. Poke has, and he  
18      said it several times here, is that I take everything and then  
19      run to Mr. Karner with it, and that's --

20             DEFENDANT POKE: You just showed him

21             MR. BYRD: I don't think he understands that there is a  
22      requirement on the defendant to comply with their discovery  
23      obligations and produce information to the government less we be  
24      barred at trial from introducing it with a claim of unfair  
25      surprise.

1           The witnesses that he had listed, first of all,  
2       Stonewall Pittman, based on what Mr. Poke told me, is only  
3       relevant as a witness if Daron Cistrunk shows up and contradicts  
4       his affidavit. And if that's the case, then our problems are a  
5       lot worse than not having Mr. Pittman here to say -- do you have  
6       a problem with me saying what you told me Pittman would testify  
7       to?

8           DEFENDANT POKE: I mean, you been giving the government  
9       everything. Go ahead. You been giving them everything. All he  
10      did was ask you one single question. You finish laying that  
11      thing out for him Mr. Bright.

12      MR. KARNER: Judge, should we step out?

13      THE COURT: Would you like the government to step out?

14      DEFENDANT POKE: I mean, it's too late. He been --

15      MR. BYRD: That's why I'm stopping and asking.

16      DEFENDANT POKE: Stopping now? Sure. Hey, go ahead.  
17      Finish.

18      THE COURT: Why don't you step out, Mr. Karner.

19      DEFENDANT POKE: It's too late. He done took very good  
20      notes.

21      MR. BYRD: Of what?

22      DEFENDANT POKE: Everything. He asked you one  
23      question, and you off into breaking down our defense and what we  
24      going to do in front of the government.

25      MR. BYRD: What defense did I give them?

1           **THE COURT:** No. The question I'm asking is talk about  
2 what witnesses we are going to call and why.

3           **DEFENDANT POKE:** Exactly. That's all he asked you.  
4 All the extra stuff, he ain't asked you all the extra stuff.

5           **MR. BYRD:** Well, the one part would encompass this.

6           **THE COURT:** Show the government's outside the  
7 courtroom

8           **MR. BYRD:** Judge, my understanding from my conversation  
9 with Mr. Poke is that the only reason Mr. Pittman would come in  
10 to testify, he is apparently Mr. Cistrunk's uncle, and his  
11 testimony supposedly would be that Daron Cistrunk owned a gun  
12 and that he had left it around the house many times and that  
13 Mr. Pittman had to yell at him to stop leaving the gun in the  
14 house.

15           **THE COURT:** All right. How do you respond then,  
16 Mr. Poke, to what Mr. Byrd has told me?

17           **DEFENDANT POKE:** If he would have went and interviewed  
18 the witness first -- because I gave him these names a long time  
19 ago. When I sent you that medical record, I wrote down a list  
20 of witnesses, and I sent that in the mail. Now -- and I sent it  
21 legal mail. Now, you don't put everything over the e-mail, you  
22 know what I'm saying, because we don't know who read the e-mail.  
23 We both came up today. So, I try to send everything out legal  
24 mail. He been hearing these names months ago to go interview  
25 these witnesses and see is these people going to come testify on

1        what they seen. Instead of him just getting the names and  
2        giving it to the government, do some work. Do some homework.

3                MR. BYRD: Can I ask what names?

4                DEFENDANT POKE: Well, I gave you Amy Favors. I gave  
5        you Cindy Mrgan. I gave you the --

6                MR. BYRD: Early in the case.

7                DEFENDANT POKE: Early in the case. These the same  
8        witnesses.

9                MR. BYRD: You sent me Cindy Mrgan ten days ago.

10               DEFENDANT POKE: No. I been telling you Cindy Mrgan  
11        to testify about my hand being messed up at the time, and there  
12        wasn't no way that I can hold anything in that hand. I told you  
13        to subpoena her to the motion here when they saying they seen me  
14        reach down, and I told him it was impossible.

15               MR. BYRD: I don't recall that at all.

16               DEFENDANT POKE: You don't recall it? That's a major  
17        part of the motion.

18               MR. BYRD: Well, then I expect you'd be able to show  
19        that I did.

20               DEFENDANT POKE: They're saying they seen me use this  
21        right arm when this right arm was almost severe shot off. Ain't  
22        that what I told you when the police grabbed my arm and you  
23        asked the police? I say have her come in and testify, same way  
24        when you gave the judge that paper. See, you just want to do  
25        everything that you want to do. It's my life. Quit trying to

1 do everything short-cutted.

2 THE COURT: What about Cindy Mrgan?

3 DEFENDANT POKE: That's the nurse who when I got to  
4 Ogle County, I had a stress ball. My right arm wasn't  
5 functioning, and I'm going through therapy. I told him to  
6 subpoena her a long time ago when we had the motion hearing so  
7 she could come testify and say my right arm wasn't functioning.

8 THE COURT: Okay. So, how does that help you in the  
9 case if your right arm wasn't functioning?

10 DEFENDANT POKE: Because the police saying that they  
11 seen me reach down like I was putting something under the seat,  
12 and that was going to show they lying right there because I  
13 couldn't hold a book in this hand, let alone a big gun. And if  
14 you would have did all that -- don't act like -- I sent them to  
15 you again.

16 MR. BYRD: I'll have to review my notes. I don't  
17 recall that.

18 DEFENDANT POKE: You always got to review your notes.  
19 And like I said --

20 THE COURT: Mr. Poke, you keep interrupting people.  
21 Mr. Byrd starts to talk and then --

22 DEFENDANT POKE: You asked --

23 THE COURT: -- and then you interrupt him Let  
24 everyone say what they need to say.

25 DEFENDANT POKE: You asked me what I think about it.

1       **So, he's interrupting me, your Honor.**

2               **MR. BYRD: I don't mean to interrupt anybody. I would**  
3       **have to go back and check my notes, but I don't recall.**

4               **DEFENDANT POKE: I mean, the whole thing with the**  
5       **witnesses --**

6               **MR. BYRD: If I --**

7               **DEFENDANT POKE: Can I finish? Can I finish, your**  
8       **Honor? Because you was asking me. The whole thing with the**  
9       **witnesses is you heard the names in the beginning. You could**  
10       **have went and investigated and seen what they was going to say**  
11       **and was we going to use them or not. Today is trial. I got to**  
12       **get here at trial and talk to you and get to find out what my**  
13       **witnesses going to do and what they're going to say and is we**  
14       **going to use them or not. By that time, you already gave them**  
15       **to the government. You just got the names and gave them to the**  
16       **government, and they beat you to the interview. And now they**  
17       **saying that they don't want to come because the government**  
18       **spooked them Now, if you would have did your part, we would**  
19       **have some witnesses, wouldn't we?**

20               **MR. BYRD: All I know is that I was sending you**  
21       **e-mails --**

22               **DEFENDANT POKE: You the victim Right. I guess you**  
23       **the victim**

24               **MR. BYRD: No. I was sending you e-mails over the last**  
25       **month and a half telling you I needed a list of witnesses and**

1       contact information for them and the response was never you've  
2       had this for months already.

3               DEFENDANT POKE: No. I sent them to you again because  
4       the whole thing is me not to argue with you, and I tried to work  
5       with you.

6               MR. BYRD: You initially told me Stonewall was the only  
7       witness you had other than Mr. Cistrunk.

8               DEFENDANT POKE: Look. Get your records. Get your  
9       records.

10              MR. BYRD: I'll have to go back and --

11              DEFENDANT POKE: Oh, man. I should have -- I started  
12       to bring them Come on, man. You know I sent you all this  
13       stuff, just like a lot of stuff you ignored in the e-mail, and  
14       the only reason he asked for the e-mail because I threatened to  
15       call the RDC.

16              MR. BYRD: I gave you their address.

17              DEFENDANT POKE: Right. After I threatened you, right,  
18       because how long it took you to get an e-mail. It took you to  
19       answer one e-mail a week. These go right to you in an hour.

20              MR. BYRD: Yeah, but I don't always get them in an  
21       hour.

22              DEFENDANT POKE: They always come in an hour. Man,  
23       because -- your Honor, the man going to sit up here. He going  
24       to constantly keep saying he ain't had time for this. We going  
25       to trial. That's the whole point. We're getting ready for

1 trial. I'm sorry to hear what happened to your family, you know  
2 what I'm saying. My life on the line. I been here in McHenry  
3 County for five days. Now, if he would have came and seen and  
4 sat down with me for them five days, I wouldn't even have came  
5 here and did this.

6 THE COURT: But you have to understand that he can't  
7 give up everything else he's doing in his life and pay attention  
8 to Dayton Poke.

9 DEFENDANT POKE: No. This is afterwards. He went to  
10 the funeral. He did what he had to do. Like he said, he ain't  
11 find out I got there 'til when Wednesday. That's when I got  
12 there.

13 Now, I at least could have -- this trial I could -- we  
14 still going to go ahead and go to trial, and I don't even get  
15 like one day to talk to him about nothing? I mean, that's what  
16 I don't understand, your Honor. I ain't telling him to give up  
17 his life, but okay, if you ain't prepared for trial, come in  
18 here and say that. Don't just rush my life through the ringer  
19 because you feel like, okay, well, I'm going to get to my life,  
20 but dude last. I mean --

21 MR. BYRD: Judge --

22 DEFENDANT POKE: -- take a continuance and tell the  
23 judge your situation.

24 MR. BYRD: Since Thursday I've put approximately 40  
25 hours into this case.

1                   **DEFENDANT POKE:**   With who?

2                   **MR. BYRD:**   With meetings reviewing the physical  
3 evidence on Friday, shopping and getting clothes for you so  
4 you're not prejudiced by wearing orange in front of a jury.

5                   **DEFENDANT POKE:**   And I don't care about wearing orange.

6                   **THE COURT:**   Don't interrupt him   Mr. Poke, he lets you  
7 talk, and you say everything you want to say, and then I ask him  
8 to get a turn, he gets three words out, and you --

9                   **DEFENDANT POKE:**   I apologize.

10                  **THE COURT:**   -- interrupt him   You can't take turns.  
11 It seems like it's impossible for you to heed what I'm telling  
12 you.   We're not going to be able to get -- it's almost 10:30.  
13 The jury's been sitting for an hour and a half while I take this  
14 motion.   We're not going to be able to make any progress on it  
15 if you keep interjecting your comments into what everybody else  
16 is trying to say.

17                  Please finish, Mr. Byrd.

18                  **MR. BYRD:**   Judge, reviewing the discovery again and  
19 getting preparation for trial was the way the weekend was spent.  
20 I did not have a three, four-hour block of time available to go  
21 out and meet with Mr. Poke in McHenry County, and prior to  
22 Wednesday he was still at the MCC and I was dealing with the  
23 death in my family.   That didn't resolve itself until late  
24 Wednesday night.

25                  **THE COURT:**   But you could still meet with Mr. Poke

1       before the government puts on its witnesses, couldn't you?

2               MR. BYRD: Yes. I attempted to do that this morning,  
3 Judge, and it was very, very unproductive and offensive to me to  
4 be there more than a minute and a half.

5               THE COURT: All right. Let's go on. I think we've  
6 already covered number six. He's always telling me I can't do  
7 something when the law says I can, like file the motion. Let's  
8 go to seven. And everything I tell him he tell Mark Karner.  
9 What's that about?

10              MR. BYRD: I believe it's his displeasure with the  
11 rules of discovery and my having to reveal witnesses and their  
12 last known addresses. And I think this gets back to the  
13 Stonewall Pittman issue. When he was disclosed to the  
14 government prior to the witness list because he was on the  
15 witness list, I had to turn that over to the government and to  
16 the court to be on the witness list so that he could be called.  
17 I did not get out to interview him I was made aware on Friday  
18 that the government had interviewed him right after court.

19              That proffer letter from Special Agent Ivancich  
20 indicated that Mr. Pittman was very evasive, indicated that he  
21 thought he might testify about a gun, but didn't remember  
22 anything, and then said he had some kind of problem with his  
23 memory and kept pointing to his head.

24              After I finally obtained the proper phone number for  
25 Mr. Pittman, I've left at least four or five messages on that

1 voice mail, it's a generic voice mail, encouraging him begging  
2 him to call me so we could discuss whether he would be a witness  
3 and what his testimony would be, and he has not done so.

4 THE COURT: All right. Is there anything else you want  
5 to say, Mr. Poke, about this?

6 DEFENDANT POKE: Mr. Byrd here is a liar.

7 THE COURT: All right. Number eight. He won't answer  
8 my phone calls or e-mails. Mr. Byrd?

9 MR. BYRD: Judge, when I'm there and the phone call  
10 comes in, unless I'm with a client or something, I take the  
11 phone call. We've had numerous calls throughout my  
12 representation. In addition, there's this Corrlinks e-mail  
13 system I don't think that he can honestly say I don't answer  
14 his e-mails because that is easily disproven. He may be  
15 frustrated that I don't sit at my computer waiting for them to  
16 come in and immediately respond.

17 But right now I currently have -- I'm carrying eight  
18 CJA cases in this court. Three or four of them are in MCC or  
19 the Federal Bureau of Prisons, and I am constantly getting  
20 Corrlinks messages. In addition to trying to run a practice, I  
21 try to respond to those as quickly as I can get to them  
22 Sometimes they have questions that require research.

23 All I can say is it's not true to say that I don't  
24 answer my phone calls or e-mails with him In fact, he stood  
25 here and said he could produce the correspondence.

1           **DEFENDANT POKE:** The last two weeks. And it ain't  
2           produced back and forth. I sent you what? Four e-mails? And  
3           you answered just one time? Why you ain't telling him how me  
4           and Bree be talking on the phone. Me and Bree, I get ahold of  
5           Bree fine, your secretary. Me and her talk fine.

6           **THE COURT:** All right.

7           **DEFENDANT POKE:** Don't she tell you how we talk?

8           **MR. BYRD:** Yes, she does.

9           **DEFENDANT POKE:** Okay. Yeah.

10          **MR. BYRD:** And I probably should leave it at that.

11          **DEFENDANT POKE:** Yeah. Leave it at that, huh. Tell  
12          Bree I said hi.

13          **THE COURT:** Okay. Number nine. He wait 'til the  
14          last -- oh. 'Til the last minute to do. I don't understand.

15          **DEFENDANT POKE:** I didn't get a chance to finish  
16          because I had to get up here.

17          **THE COURT:** Okay. Finish.

18          **DEFENDANT POKE:** He wait to the last minute to do  
19          anything, as you see with the meeting with me, with the  
20          witnesses, with the going over the paperwork. Everything it's  
21          the last minute. I ain't telling him to stop what he doing in  
22          his life. I'm just saying that he getting paid for this.

23          **THE COURT:** All right. Mr. Byrd.

24          **MR. BYRD:** I'm not sure what he's talking about. It  
25          seems to encompass many of his other complaints. I don't

1 believe I've waited to the last minute to get this case ready.  
2 We certainly -- and I think notwithstanding the court's ruling,  
3 I did a pretty good job on the motion to quash and suppress.

4 DEFENDANT POKE: I think I did most of that work.

5 MR. BYRD: Okay.

6 THE COURT: All right. Mr. Byrd, are you willing to  
7 continue to communicate with Mr. Poke?

8 MR. BYRD: I'll do my best, Judge. If he's willing to  
9 work with me --

10 DEFENDANT POKE: No.

11 MR. BYRD: -- it would be productive, if it can be.  
12 I'm not going to try to prevent it from being productive.

13 DEFENDANT POKE: No.

14 THE COURT: Okay. Is there any reason that occurs to  
15 you why you cannot provide an adequate defense for Mr. Poke?

16 MR. BYRD: Well, the only thing that would come to mind  
17 is his behavior toward me. The man obviously despises me and  
18 doesn't have any confidence or faith in me whatsoever. I think  
19 that there appears to have been a breakdown in the relationship  
20 that I believe is largely responsible for Mr. Poke, not myself.  
21 But if he's prepared and willing to work with me, I would be  
22 willing to continue on in the case. But that's up to him I  
23 don't want to be swore at. I don't want to be belittled.

24 DEFENDANT POKE: And I don't got no respect for this  
25 dude. You a liar.

1           **THE COURT:** All right. Let's bring the government back  
2     **in.**

3           **(Brief pause.)**

4           **THE COURT:** All right. Show the government appears.

5           I've reviewed the defendant's motion. I have to  
6     consider certain factors in determining or disposing of a motion  
7     to substitute counsel. One is the timeliness of the motion.  
8     The second is the adequacy of the court's inquiry into the  
9     defendant's motion. Whether the conflict was so great that it  
10    resulted in a total lack of communication preventing an adequate  
11    defense. And whether the attorney is doing or not doing  
12    something that a minimally competent attorney would not do or  
13    do.

14           As to the timeliness, I don't think it could be worse.  
15    When we were in court on February 28th, I advised Mr. Poke, as I  
16    recall, at least two times that what he had to do was prepare a  
17    written motion and give it to the clerk, and I would respond to  
18    it. I'd put it on my call immediately thereafter. He failed to  
19    do that. In fact, gave me the motion at my prodding after the  
20    jury was ready to come into the courtroom

21           As to my inquiry into the defendant's motion, I think  
22    I've made an adequate inquiry. I credit Mr. Byrd's version of  
23    the facts.

24           As to whether the conflict was so great that it  
25    resulted in a total lack of communication preventing an adequate

1 defense, I do not find that. In fact, I find that there's been  
2 more than an adequate communication between the defendant and  
3 his attorney, more than I've seen in many cases that have come  
4 before me in this posture.

5 And as to whether Mr. Byrd is not doing or doing  
6 something a minimally adequate or competent attorney would do, I  
7 think he's well above providing Mr. Poke with an adequate  
8 defense, and his preparation has been substantial.

9 I find that none of the complaints individually nor  
10 cumulatively entitle the defendant to another attorney. So,  
11 I'll deny the defendant's motion. Let's bring the jury in, and  
12 we'll start choosing a jury.

13 Mr. Poke, if you're going to blame anybody for keeping  
14 Mr. Byrd on the case, blame me. I'm the one that made the  
15 decision. As I said, I think he would like to get off this  
16 case, but I think he's discharging his duties.

17 DEFENDANT POKE: And I'm not cooperating with him  
18 Simple as that.

19 THE COURT: Well, but you do so at your peril. If you  
20 don't cooperate with him you're going to hurt yourself. I  
21 would suggest you take advantage of what he can offer you and do  
22 what you need to do in order to get an adequate defense. I want  
23 justice to be served, and if the government doesn't prove what  
24 they need to prove, then you should be acquitted. You should  
25 walk out of here. If they do prove what they need to show as

1       they're required by the law to show beyond a reasonable doubt,  
2       then I'm going to have to set it for sentencing if the jury  
3       agrees with the government. But what I want to urge you to do  
4       is cooperate with Mr. Byrd, give yourself the best chance  
5       possible to get an acquittal in this case.

6               MR. KARNER: Judge, is the court finding then -- I'm  
7       just asking for my own clarification -- that there has not been  
8       an irreconcilable breakdown in the attorney-client relationship?

9               THE COURT: Yes. Let's bring the jury in.

10              MR. KARNER: And --

11              DEFENDANT POKE: Ain't no jury, man. Ain't no  
12       courtroom I ain't going to do nothing. Ain't no trial, man.  
13       Ain't no trial.

14              THE COURT: All right. Let the record reflect that the  
15       defendant reached in his shirt and pulled it apart, and all the  
16       buttons went flying around the courtroom

17       (Whereupon, the defendant was removed from the courtroom)

18              THE COURT: All right. Let's bring the jury in.

19              MR. BYRD: Judge, are we going to proceed without  
20       Mr. Poke's presence?

21              THE COURT: No. We'll have to have him brought back  
22       in. It's going to take awhile for the jury to get up here.

23       (Brief pause.)

24              THE COURT: All right. Let's bring Mr. Poke in.

25              THE MARSHAL: I'm sorry?

1                   **THE COURT:** Can we bring him in?

2                   **THE MARSHAL:** He's in his boxers.

3                   **THE COURT:** Bring him in.

4                   **(Brief pause.)**

5                   **THE MARSHAL:** Your Honor, he's refusing to come out.

6                   **THE COURT:** All right. Let's go on the record. Show  
7                   **Mr. Karner and Mr. Pedersen appear, along with Mr. Byrd. I have**  
8                   **instructed the CS0 to bring the jury up, to hold the jury out in**  
9                   **the hall until we can get Mr. Poke in the courtroom. The**  
10                  **marshal has advised me that Mr. Poke has disrobed? Is this**  
11                  **right? I saw him pull his shirt apart. He's taken his pants**  
12                  **off, too?**

13                  **THE MARSHAL:** Yes, sir. He has stripped down to his  
14                  **boxer shorts and is refusing to come out.**

15                  **MR. KARNER:** Maybe, Judge, can I suggest this? We take  
16                  **some time to go down and allow us to research what our options**  
17                  **are here. That might allow Mr. Poke time to come to his senses**  
18                  **and calm down.**

19                  **THE COURT:** Rule 43 states that a defendant who is  
20                  **initially present at trial or who had pleaded guilty or nolo**  
21                  **contendere waives the right to be present under the following**  
22                  **circumstances. C says when the court warns the defendant that**  
23                  **it will remove the defendant from the courtroom for disruptive**  
24                  **behavior, but the defendant persists in conduct that justifies**  
25                  **removal from the courtroom**

1                   Can you -- he will not come into the courtroom?

2                   THE MARSHAL: Not willingly, your Honor. We can get  
3 him in here, but it's going to be against his will.

4                   THE COURT: Well, it would be easy for me to say bring  
5 him in here, but I don't want to take a chance of the marshals  
6 or anyone else in the courtroom being injured. I'd like to talk  
7 to him

8                   THE MARSHAL: If you'd like, your Honor, we could  
9 perhaps talk to him a little more.

10                  THE COURT: Would you just tell him that I'd like to  
11 talk to him that I won't ask anything of him other than just to  
12 listen to what I have to say?

13                  THE MARSHAL: Yes, sir.

14                  THE COURT: Mr. Karner, Mr. Pedersen, why don't you  
15 have a seat back there.

16                  MR. KARNER: Okay.

17                  (Brief pause.)

18                  THE COURT: Mr. Poke, just stand up to the podium  
19 Show Mr. Poke appears in a jail jumpsuit.

20                  I've asked the attorneys to sit back at their tables so  
21 that I can talk to you. I assure you that everybody in this  
22 room wants to hold the government to its burden, and that is  
23 right now as you stand there, you're presumed to be innocent of  
24 this charge or these charges, and it's up to the government to  
25 convince the people that we assemble for the jury that they have

1       proved their case by competent evidence beyond a reasonable  
2       doubt. Until that time, you're innocent. If they, after  
3       hearing all the evidence, decide that the government has not met  
4       its burden of proof, then I'm going to enter judgment of  
5       acquittal, and I'm going to order the marshals to release you.  
6       You're only hurting yourself by failing to cooperate.

7               Now, let me suggest this to you. If at the end of all  
8       this you feel that Mr. Byrd has not given you adequate  
9       representation, you're not just out of luck. You can present  
10      that contention to the Court of Appeals, and they'll review the  
11      record, and they'll decide whether Mr. Byrd has adequately  
12      represented you, and they'll decide whether I've made the right  
13      choice in telling Mr. Byrd he has to stay on the case.

14             But by acting this way, you're only hurting yourself.  
15      By acting this way, you're only diminishing your chances to get  
16      an acquittal in this case. It makes no difference to me one way  
17      or the other whether you're convicted or not. I just make  
18      sure -- I want to make sure the process is right, the process is  
19      fair. I'm doing my best to make the best and the fairest  
20      decisions that I can to make sure that the process that we put  
21      in place to determine guilt or innocence is the way it should  
22      be. I'm making a personal appeal to you for your own best  
23      interests to cooperate with Mr. Byrd and give yourself the best  
24      chance possible.

25             Now, there's a rule that says when I warn you that I

1 will remove you from the courtroom for disruptive behavior and  
2 you persist in disruptive behavior, we can proceed without you  
3 here. We can proceed without you in the courtroom And I'll  
4 try my best to put you in a room where you can observe the  
5 proceedings or you can talk to Mr. Byrd remotely, but that's not  
6 going to give you the best representation. That's not going to  
7 give you the best chance. That's not going to give you the best  
8 opportunity to hold the government to its burden of proof.

9 I just talk to you man to man, heart to heart about  
10 what I think is in your best interests right now. But you have  
11 to make the decision. And I will tell you that if you continue  
12 disruptive behavior, I'm going to go ahead with this trial, but  
13 I'm going to put you off in place where I know that you're not  
14 going to hurt anybody or cause disruption to this proceeding.

15 My job is to make sure that this proceeding is fair.  
16 My job is to make sure that this proceeding is orderly. I've  
17 got a jury sitting out in the hall right now ready to come in to  
18 try this case. I'm going to do my best to get you the fairest  
19 jury that I can, I'm going to hold the government to its burden  
20 of proof, and I'm going to leave it to the jury to decide  
21 whether the government's sustained its burden of proof or not.  
22 It's not my decision. It's the jury's decision. But I promise  
23 you that I'll try as hard as I can to give you the fairest trial  
24 that I can.

25 You and I have some disagreements. You see things a

1 different way. You disagree with my decision to keep Mr. Byrd  
2 on the case. I regret that. I wish this case could go forward  
3 smoothly, orderly. It doesn't look like that's happened so far,  
4 but it can still happen. But you have to give yourself the best  
5 chance possible.

6 All right. I've said everything I want to say. You  
7 tell me what you want to say.

8 DEFENDANT POKE: I mean, what hurt me is knowing  
9 Mr. Byrd ain't doing all he can do to help me, and all I want is  
10 a fair trial, and I know I ain't going to get no fair trial with  
11 Mr. Byrd because we did no work. So, if you want me to sit here  
12 and agree to just going to trial blind without knowing what's  
13 going on or how to proceed at trial with the help of my counsel,  
14 you know what I'm saying, I can't do that.

15 THE COURT: As I've said, if Mr. Byrd doesn't do an  
16 adequate job, if he doesn't -- if he doesn't do what a minimally  
17 competent attorney would do to represent you, you can take that  
18 to the Court of Appeals. They reverse cases and reverse  
19 decisions and give defendants new trials that aren't adequately  
20 represented by competent counsel in court.

21 What I'm telling you is that if you work with him  
22 maybe you won't even get to the Court of Appeals because you'll  
23 get acquitted. I don't know. As far as I'm concerned, you're  
24 innocent right now until the government proves you guilty.

25 All I'm telling you is I'm making a personal appeal to

1     you, for your best interests, to do what you need to do now to  
2     give yourself the best chance to get an acquittal in this case.  
3     But you're a grown man. It's up to you. You make decisions  
4     what's in your best interests. You make decisions what you  
5     think is going to be best for you. You can either come in the  
6     courtroom and cooperate with Mr. Byrd and give yourself the best  
7     defense you can at trial and then leave it up to the Court of  
8     Appeals to do what they want to do, or you can continue to  
9     disrupt the case, and then, even though I don't want to, even  
10    though it's not preferenced, I'm going to hold you off in a  
11    separate place where I know you won't hurt anybody, and you can  
12    observe what's going on outside the courtroom. But, you know,  
13    you decide. You tell me. Give yourself a chance right now.  
14    Give yourself a chance at trial. That's all I'm saying to you.

15           DEFENDANT POKE: I mean, I don't even -- he ain't even  
16    talked to me what evidence going to get let in. I don't know  
17    nothing, your Honor.

18           THE COURT: Let me tell you this. I don't think we'll  
19    get to witnesses today. I've told Mr. Byrd that we're going to  
20    pick a jury. If we can, I'm going to admonish the jury.  
21    Mr. Byrd or the parties may give their opening statements, but  
22    I'm not going to call any witnesses until tomorrow morning. So,  
23    you'll have the rest of the day and tonight to talk to Mr. Byrd  
24    and do what you need to do to present your defense.

25           Why don't you just come in, try it, see how it works.

1       You're only hurting yourself by being -- I mean, I'm going to go  
2       ahead with this case. The jury is out there. I'm going to  
3       start it.

4               DEFENDANT POKE:   Okay.

5               THE COURT:   But I'd rather start it with you here than  
6       with you in another room That's what I'm telling you.

7               DEFENDANT POKE:   I'm going to let you all go ahead,  
8       your Honor.

9               THE COURT:   Okay. Fair enough. That's a smart move, I  
10      think.

11              MR. KARNER:   Judge, there's still the issue, though, if  
12      the defendant is going to waive his right to be present at  
13      sidebars, for example.

14              THE COURT:   Okay. I'll bring that up to him

15              MR. BYRD:   Is he going to put on street clothes again?

16              THE COURT:   I guess so.

17              (Whereupon, the defendant left the courtroom )

18              MR. KARNER:   Judge, I believe what he said was that  
19      I'll let you go ahead. Basically, without me.

20              THE COURT:   Oh. I thought he said he wanted to be  
21      here.

22              THE MARSHAL:   That's the way I took it. He said, "I'm  
23      going to let you all go ahead." Just interpretation, it sounded  
24      like --

25              THE COURT:   All right. Why don't you bring him back

1       then?

2               **THE MARSHAL:** Just for clarification.

3               **THE COURT:** Okay. Thank you.

4               **MR. PEDERSEN:** Then, Judge, this is -- I don't have the  
5       cite for the Matthew Hale case, but I have a slip copy, and I  
6       gave Mr. Byrd a copy of it, too. That case involved a  
7       discussion with the jurors in chambers, and the defendant didn't  
8       go into chambers with the attorneys when the jurors were  
9       questioned individually, but I think the same reasoning would  
10      apply here. If the defendant is choosing not to be present  
11      while the jury is selected, he needs to waive that knowingly.

12              **THE COURT:** I misunderstood then. I thought he said he  
13      was going to go ahead with him here.

14              **MR. KARNER:** That's what I thought he said, too.

15              (Brief pause.)

16              **THE COURT SECURITY OFFICER:** He's putting on his  
17      civilian clothes. He's coming.

18              (Brief pause.)

19              **THE COURT:** All right. Let the record reflect it's  
20      11:09. Let's call the jurors in.

21              **MR. KARNER:** Judge, if we can address the matter of  
22      defendant's presence at sidebars, though.

23              **THE COURT:** Tim hold on just a second.

24              **Mr. Poke,** during jury selection -- I don't know if  
25      you've ever gone to a jury trial before or not, but during jury

1 selection sometimes it's necessary for me to talk to the  
2 attorneys at sidebar, which is a conference right over here.  
3 There's a microphone over here that picks up everything we say.

4 You have a right to be present during those sidebar  
5 conferences. It's rare that defendants do come up for the  
6 sidebar conferences, but some do. But it's your choice. You  
7 can either remain in your seat, we'll conduct the sidebar, and  
8 Mr. Byrd will report to you what happened at the sidebar, or you  
9 can come up with the parties and listen to what we do at sidebar  
10 along with everyone else.

11 My point is it's your decision. So, if I call a  
12 sidebar and I ask the attorneys to meet me over here privately  
13 out of the hearing of the jury and you don't come up, I'm going  
14 to assume that you waive your right to be present at those  
15 sidebar conferences. If you do come up, then I assume you want  
16 to be present, and we'll proceed that way. Understand?

17 DEFENDANT POKE: Yes, sir.

18 THE COURT: Okay.

19 MR. KARNER: And one other thing just for the record.  
20 I know the court went over the items of the defendant's pro se  
21 motion, but I don't know if the court ever elicited from  
22 Mr. Byrd if he objected to the defendant's motion or agreed with  
23 the motion and --

24 THE COURT: Well, I assume since Mr. Byrd --

25 MR. BYRD: I'm sorry. I was speaking.

1           **THE COURT:** -- addressed the motion that he's willing  
2 to proceed.

3           **MR. KARNER:** Well, I don't know that his position in  
4 objecting or agreeing to the motion was ever made of record.

5           **THE COURT:** What's your position, Mr. Byrd?

6           **MR. BYRD:** As far as my remaining on the case?

7           **THE COURT:** Yes.

8           **MR. BYRD:** I had indicated that if Mr. Poke would work  
9 with me, I believed I could continue to represent him on the  
10 matter.

11           **THE COURT:** Okay. Thank you.

12           **MR. BYRD:** He at least appears to be listening to me a  
13 little bit as I'm talking to him about what to expect with the  
14 jury. It's difficult for me to say.

15           **THE COURT:** So it's clear for everyone, I agree that  
16 there's some friction here. But what I told Mr. Poke is I want  
17 him to give himself every chance he can to get an acquittal at  
18 the trial phase of his proceeding in court.

19           **MR. BYRD:** And I'll state for the record I agree with  
20 that, and I want to try to give him his best opportunity at  
21 trial.

22           **THE COURT:** All right.

23           **MR. BYRD:** Nothing that transpired here this morning  
24 has changed that in my mind.

25           **THE COURT:** I'll rely on you to do your level best to

1 do everything you can to get an acquittal for him in this case.

2 MR. BYRD: I understand.

3 THE COURT: All right. Bring the jury in, please, Tim  
4 (Whereupon, twelve jurors and two alternate jurors were  
5 selected, but not sworn, to try the case herein, after which  
6 the following proceedings were had:)

7 THE COURT: All right. Show all parties appear.

8 Mr. Ferguson, it's 5:02 by the courtroom clock. Is  
9 Mr. Cistrunk in the building?

10 THE COURT SECURITY OFFICER: He is not in the building,  
11 your Honor.

12 THE COURT: All right. Mr. Byrd.

13 MR. BYRD: Your Honor, at this time, based upon  
14 Mr. Cistrunk being an essential defense witness -- in fact, one  
15 of the only witnesses on one of the major counts in this case --  
16 and due to his unavailability or his refusal to obey the  
17 subpoena, we do, I would note for the record, based on your  
18 Honor's signature this morning, have a material witness warrant,  
19 as well as a contempt warrant, out for Mr. Cistrunk since about  
20 9:30 this morning. It's my understanding that the U.S.  
21 Marshal's Service in Indiana has diligently been expending great  
22 efforts to try to get Mr. Cistrunk served with that warrant to  
23 take him into custody, but that has not happened yet.

24 At this time I would be making a motion to discharge  
25 the jury and continue this trial until such time as we have

1       **allowed a reasonable period of time to try to effectuate**  
2       **Mr. Cistrunk's arrest.**

3               **I make that motion under the ends of justice provision**  
4       **of the Speedy Trial Act and would represent to the court that,**  
5       **as the court's aware, I believe, Mr. Cistrunk is an essential**  
6       **witness who appears to be in contempt of the court and evading**  
7       **service. To that extent, I believe that Mr. Poke's interests in**  
8       **compulsory service of process, a fundamental Sixth Amendment due**  
9       **process right, outweighs any speedy trial rights that the public**  
10       **or government enjoy.**

11               **THE COURT: Can the Marshal's Service inform me whether**  
12       **Mr. Cistrunk's been arrested on either of the warrants that are**  
13       **pending?**

14               **THE MARSHAL: No, sir.**

15               **THE COURT: He has not been arrested.**

16               **THE MARSHAL: No. Deputy Lombardo is aware, and she**  
17       **would interrupt proceedings to let you know if he had been**  
18       **arrested.**

19               **THE COURT: All right. Mr. Karner.**

20               **MR. KARNER: We have no objection.**

21               **THE COURT: All right. I'll grant the defendant's**  
22       **motion for a continuance. I will discharge the potential**  
23       **members of the jury. I'll set this case for trial the week of**  
24       **May 6th. I'll give you May 6th, 7th, 8th, and 9th.**

25               **MR. KARNER: I don't think we'll need all four days,**

1 but I thought we would have had this case tried by now, too.

2 THE COURT: You think you can do it in three?

3 MR. KARNER: I think we can do it in three.

4 MR. BYRD: Mr. Karner underestimates my longwindedness.

5 THE COURT: I think I'll give you four.

6 MR. BYRD: Obviously, your Honor doesn't.

7 THE COURT: All right. I'll bring the jurors in, and  
8 I'll excuse them But before we get to that, I'm going to  
9 revisit Mr. Poke's request for another attorney.

10 Mr. Poke, do you still wish another attorney to  
11 represent you in this case?

12 MR. KARNER: Judge, I'm sorry. Before we get to that,  
13 can I just make a motion to exclude the time period from today  
14 through and including May 6th, 2013, pursuant to 18 U.S.C.  
15 3161(h)(7)?

16 THE COURT: Yes. I'll find that to deny the  
17 continuance would deny counsel for the defendant the reasonable  
18 time necessary for effective preparation taking into account the  
19 exercise of due diligence, that failure to grant a continuance  
20 would result in a miscarriage of justice, and that it would be  
21 unreasonable to expect adequate preparation for the trial itself  
22 within the speedy trial period and that the ends of justice  
23 served by taking such action outweigh the best interests of the  
24 public and the defendant in a speedy trial. Any objection,  
25 Mr. Byrd?

1                   **MR. BYRD:** No, your Honor.

2                   **THE COURT:** All right. Mr. Poke, do you still wish  
3 another attorney to represent you --

4                   **DEFENDANT POKE:** Yes, I do.

5                   **THE COURT:** -- and Mr. Byrd to be substituted?

6                   Since we're continuing this case, that takes one of the  
7 factors that I have to consider, that is, the timeliness of the  
8 motion, out of the equation. It weighs in favor of the  
9 defendant at this point. So, I'm going to grant that motion.  
10 I'll relieve Mr. Byrd of any further representation in this  
11 case. I'll ask the Clerk's Office to notify the Federal  
12 Defender that we need another attorney appointed to represent  
13 Mr. Poke. That's it. Let me bring the jurors in.

14                   **MR. KARNER:** And I know Mr. Byrd will do this, Judge,  
15 but he'll turn over the discovery.

16                   **MR. BYRD:** Absolutely.

17                   (The following proceedings were had in open court, in the  
18 presence and hearing of the jury:)

19                   **THE COURT:** Please have a seat, folks. Ladies and  
20 gentlemen, I'm going to excuse you from further jury service in  
21 this case. You don't have to be concerned about the reason for  
22 that. Circumstances have converged in such a way that requires  
23 me to discharge you. And so, you won't be required to do  
24 anything more on this case or any other case this week. Thank  
25 you for your time, effort, your attention, your willingness to

1       serve. I think it's obvious to everyone here that we would not  
2       be able to run the federal criminal justice system if it weren't  
3       for people who were willing to take time away from their  
4       families and their lives and their jobs in order to assist us.  
5       You've admirably discharged your duty, your civic duty as  
6       jurors. It's been a pleasure to meet all of you, and I wish you  
7       good evening.

8               (The following proceedings were had in open court, out of  
9       the presence and hearing of the jury:)

10              THE COURT: All right. We'll see you at 8:45 May 6th.

11              MR. BYRD: Judge, is it your expectation that I would  
12       be here that morning?

13              THE COURT: Pardon me?

14              MR. BYRD: Is it your expectation that I will be here  
15       that morning?

16              THE COURT: No. The new attorney will be here.

17              MR. BYRD: Thank you.

18              THE COURT: Court's in recess.

19              (Which were all the proceedings had in the above-entitled  
20       cause on the day and date aforesaid.)

1           **I certify that the foregoing is a correct transcript from**  
2           **the record of proceedings in the above-entitled matter.**

3  
4  
5           \_\_\_\_\_  
6           **Mary T. Lindbloom**  
7           **Official Court Reporter**  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25